

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL DOCKET NO.: 5:08CV57-V

ORDER DISMISSING APPEAL AS MOOT

THIS MATTER is before the Court on its own motion and in response to correspondence received from the U.S. Bankruptcy Court with regards to the above-captioned case.

On June 10, 2008, the U.S. Bankruptcy Court notified this Court of Appellant's failure to perfect the instant bankruptcy appeal pursuant to Rule 8001(a)¹ by failing to satisfy 28 U.S.C. §1930 (filing fee) and F_{ED}. R. B_{ANKR}. 8006 (designation of record on appeal and statement of issues).² (See Document #2)

However, on June 18, 2008, counsel appeared on behalf of Appellant White in the underlying Chapter 13 proceedings before Judge Whitley. Counsel James B. Mallory, III, submitted a Notice of Withdrawal of Debtor's Notice of Appeal of Court's Dismissal of Case. (Bankr. Case No.: 08-50383 / Document #17)

¹ Rule 8001(a) provides in pertinent part that:

“An appellant’s failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court . . . deems appropriate, which may include dismissal of the appeal. . . .”

² Appellant, who was previously proceeding *pro se*, sought to appeal a May 1, 2008 Order of the Bankruptcy Court dismissing her Chapter 13 case for numerous deficiencies. (Bankr. Case No.: 08-50383 / Document #12)

On June 23, 2008, counsel, without explanation, filed a document seeking to withdraw the June 18, 2008 filing (i.e., Notice of Withdrawal of Debtor's Notice of Appeal). (Bankr. Case No.: 08-50383 / Document #21)

Finally, on June 26, 2008, counsel filed a document prepared by Appellant White and entitled, "Motion To Withdraw Appeal and for Ex Parte Dismissal Of Case." (Bankr. Case No.: 08-50383 / Document #22) Appellant's *pro se* filing recognizes that the instant bankruptcy case was dismissed in light of her "failure to file correct schedules" and explains that counsel was retained to file another Chapter 13 petition "that is in full compliance with the code." Therefore, Appellant asks that the instant action be dismissed.

IT IS, THEREFORE, ORDERED the instant civil action shall be **DISMISSED as MOOT.**

IT IS FURTHER ORDERED that the Clerk of Court shall forward a copy of the instant Order to the Appellant / Debtor, Appellee / Trustee, and U.S. Bankruptcy Court.

Signed: June 30, 2008



Richard L. Voorhees
United States District Judge

